

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: March 29, 1991

TO: Peter B. Hoffman, Regional Director
Region 34

FROM: Robert E. Allen, Associate General Counsel
Division of Advice

SUBJECT: Dynamic Controls Corp. 524-5090-3360
Case Nos. 34-CA-4771 et al. 536-2554-3100
IAM Local 354 and International 536-2581-3307
Association of Machinists
(Dynamic Controls Corp.)
Case Nos. 34-CB-1313 et al.

These cases were submitted for advice because they raise issues arising under CWA v. Beck, 128 LRRM 2729 (1988).

The collective-bargaining agreement to which the Employer and IAM Local 354 are signatories contains the following union-security clause:

2.1 All employees covered by the Agreement shall, on or before the sixtieth (60th) day immediately following the execution of this Agreement, or on or before the sixtieth (60th) day immediately following the date of their most recent employment, whichever is later, become and remain members of the Union in good standing to the extent of paying an initiation fee, or reinstatement fee, and membership dues during the term of this Agreement. (emphasis added)

The Charging Parties (Bluteau, Payne, and Dinsmore) became members of IAM Local 354 when first employed by the Employer, allegedly because of misrepresentations by the Employer and the Union that employees were required to become Union members as a condition of employment. Bluteau, Payne and Dinsmore resigned their Union memberships on February 2, March 13, and March 21, 1990 respectively. In their resignation letters, Payne and Dinsmore objected to paying dues in excess of a pro rata share of expenses for collective bargaining, contract administration, and grievance adjustment. Bluteau submitted a similar Beck objection to the Union on June 5, 1990.

The Unions¹ have refused to treat the Charging Parties as objecting nonmembers, have failed to provide them with Beck disclosure statements, and have continued to seek from them payment of full financial core dues, as well as reinstatement fees for failure to comply with their dues obligations. The Unions assert that the Charging Parties are not objecting nonmembers because they filed their objections outside of the Unions' January "window period" for accepting objections. The Unions publish an annual Beck notice, in the December edition of the newspaper "The Machinist", which describes the "window period" as well as various procedural requirements for filing Beck objections.² The Unions do not provide employees who resign after the publication of this notice and/or after the expiration of the "window period" with a separate notice and opportunity to file Beck objections.

Our conclusions with regard to the issues submitted to Advice are as follows:

1. Is the union-security clause at issue unlawful on its face because it appears to require the payment of full membership dues and fails to advise non-members of their Beck rights?

We conclude that the union-security clause at issue herein, which requires employees to become and remain members of the Union in good standing, to the extent of paying membership fees and dues, is not unlawful.

First, the requirement that employees maintain "membership" in the union as a condition of employment, standing alone, is lawful. Thus, with certain limitations

¹ Local 354 and the International Association of Machinists are hereinafter referred to collectively as "the Unions". Local 354 is the Section 9(a) representative but does not have its own Beck system. Rather, the International has created a Beck system, in which the International both informs employees of their General Motors and Beck rights and processes objections and challenges.

² The Beck notice appears on the next to last page of the newspaper and there is no reference to the notice on the front page or in a table of contents.

not relevant here, the first proviso to Section 8(a)(3) itself states that collective-bargaining agreements may lawfully require "membership" as a condition of employment. In NLRB v. General Motors Corp.,³ the Supreme Court construed the term "membership," as used in the 8(a)(3) proviso, to encompass only the obligation to pay initiation fees and dues, and not the obligation of full membership. As the Court phrased it, "membership as a condition of employment is whittled down to its financial core." 373 U.S. at 742. See also Union Starch & Refining Co., 87 NLRB 779 (1949), enf'd. 186 F.2d 1008 (7th Cir. 1951). Accord: Paragon Products Corporation, 134 NLRB 662, 666 (1961).

Additionally, while the Supreme Court in Beck further "whittled down" the financial core of "membership" that could legally be required by a collective-bargaining agreement, it did not hold that standard union-security clauses requiring membership are unlawful. Rather, the Court there addressed the separate issue of the lawfulness of a union's practice, policies, and procedures in enforcing the clause in that case. Thus, the Court held that the duty of fair representation requires a union to refrain from using objecting nonmembers' union-security monies for nonrepresentational purposes.

That employees may read the term "membership" in a contract in the conventional sense rather than as it has been interpreted by the Board and courts does not require a contrary result. Thus, such contract language cannot be read in isolation to determine whether a union has satisfied its responsibilities under the duty of fair representation as construed by Beck. Rather, the contract must be read in light of the union's responsibilities under the duty of fair representation to provide Beck notices to nonmembers and new employees.⁴ While the Beck notices do not require that the unions provide General Motors information per se, they do require unions to inform nonmembers and new employees that, if they file an objection, they can only be required to pay to the union

³ 373 U.S. 734 (1963).

⁴ International Association of Machinists and Aerospace Workers and its District Lodge 751 (The Boeing Co.), Cases 19-CB-6643, 6649, et al., and 19-CA-20790, 21167, Advice Memorandum dated February 6, 1991.

agency fees equivalent to the portion of the membership dues attributable to the union's cost of representing the unit. Thus, the right to be only a financial core member implicitly flows from the Beck notices.

Moreover, in Paragon Products Corporation, supra, the Board pointedly quoted the following Supreme Court language in NLRB v. News Syndicate Company, 365 U.S. 695 (1961): ". . . we will not assume that unions and employers will violate a federal law . . . against a clear command of this Act of Congress. As stated by the Court of Appeals 'In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives.'" 134 NLRB at 664 (emphasis supplied by the Board).

We recognize that the Board has found that (1) a union violates Section 8(b)(1)(A) and (2) by signing an illegal closed-shop agreement, even if it was not enforced;⁵ and (2) a union and an employer violate Sections 8(b)(1)(A) and (2), and 8(a)(1) and (3), respectively, by maintaining provisions in the collective-bargaining agreement giving superseniority to union officials whose responsibilities were not directly related to on-the-job grievance processing and contract administration, and by applying those illegal provisions to bump employees.⁶ However, those cases are distinguishable on the ground that the clauses in (1) were illegal on their face under the Act and in (2) were illegal based on Board decisions. Thus, the clauses in the cited cases affirmatively set forth unlawful provisions. The alleged deficiency in the instant cases is that the clause fails to set forth certain rights. Moreover, the clauses were the sole source of employee information there. By contrast, unions are required to provide employees notice of their Beck rights.

Accordingly, we believe that General Motors and Beck rights need not be stated outright in a union-security

⁵ Amalgamated Meat Cutters and Butcher Workmen, 81 NLRB 1052, 1054 (1949).

⁶ Arvin Automotive, A Division of Arvin Industries, 285 NLRB 753 (1987), where the Board discussed Gulton Electro-Voice, 226 NLRB 406 (1983), enfd. 727 F.2d 1184, 115 LRRM 2760 (D.C. Cir. 1984).

clause in order for that clause to be facially valid. To contend otherwise would put the General Counsel in the anomalous position of arguing that, unless parties negotiate language in such clauses that informs employees of their General Motors and Beck rights, a clause will be considered unlawful, although its language is authorized by the Act. This would be tantamount to finding the first proviso of Section 8(a)(3) unlawful.

Having determined that union-security clauses which track the Act are facially lawful even though they do not set forth employees' rights under General Motors and Beck, a fortiori, union-security clauses would also be facially lawful if some of those rights are set forth in the contract. The contract here states that employees must become and remain "members" of the Union, but only to the extent that they must pay dues and initiation/reinstatement fees.⁷ The question thus presented is whether the clause is lawful if it sets forth the General Motors right, but not the Beck right. In other words, is the giving of half a loaf unlawful when the giving of no loaf or a complete loaf is lawful? Because a union is obligated to provide Beck notices to employees who have exercised their General Motors right, the affected employees, in fact, are apprised of both General Motors and Beck rights -- the former in the contract and the latter by separate notice. It therefore follows that the employees will not be misled and the Union has not violated its obligations to the employees. Moreover, under the second proviso of Section 8(a)(3), employees may be required to maintain membership in a union only to the extent of paying "the periodic dues and the initiation fees uniformly required."

In short, the Union and the Employer did not violate the Act by entering into and maintaining a "union-security" provision requiring employees to become and remain members of the Union to the extent of paying dues and

⁷ The clause specifically requires "membership in good standing." However, "membership in good standing" is expressly defined as requiring only the payment of membership fees and dues, and thus does not impose obligations beyond the discharge of financial responsibilities to the Union. Compare Marquette University, Cases 30-CB-3130-1 et al., Advice Memorandum dated August 23, 1990.

initiation/reinstatement fees uniformly required, because both of those aspects of the union-security provision (1) track the statutory language and (2) must be read in light of the obligations the Union is required to discharge, per Beck, under the duty of fair representation.

2. Did the Employer and the Union violate the Act by the manner in which they advised the Charging Parties of their obligations under the union-security clause?

The Charging Parties have alleged that oral "misrepresentations" made to them by the Employer and the Local Union, to the effect that employees must join the Union in order to retain employment with the Employer, were in violation of the Act. We need not resolve the substantive issues presented by these allegations. Since the most recent of the alleged statements was made in November 1989, and the charges were not filed until June 1990, these allegations are time-barred under Section 10(b).⁸

3. Have the Unions violated Section 8(b)(1)(A) of the Act by failing to provide Dinsmore, Payne, or Bluteau with an audited breakdown of their expenditures in light of their non-membership and their objections to paying dues in excess of those required under Beck?

We conclude that the Unions have violated Section 8(b)(1)(A) by refusing to treat the Charging Parties as objecting nonmembers, i.e., declining to issue them appropriate Beck disclosure notices and continuing to seek from them full membership dues. The Unions were not privileged to disregard the Charging Parties' Beck objections filed outside the January window period.

⁸ We note, however, that regardless of the lawfulness of the union-security clause at issue herein, a union violates Section 8(b)(1)(A) when it enforces such a clause by telling employees that they are required to become full members, and not just financial core dues-paying members, as a condition of employment. See United Stanford Employees, Local 680 (Leland Stanford Junior University), 232 NLRB 326 (1977); UFCW, Local 1036 (Ralph's Grocery), Case 31-CB-7881, Advice Memorandum dated July 31, 1989.

If a union member resigns after the union issues its annual Beck notice, a separate notice and opportunity to object to paying full dues must be provided to that new nonmember.⁹ Moreover, although a union may establish a reasonable "window period" for receiving annual objections, it cannot apply the window period to employees who first resigned after the window period closed.¹⁰ Each of the Charging Parties resigned from Union membership after the Unions had issued their annual Beck notice and after the annual window period had closed, and each was entitled to another notice and opportunity to object. Therefore, even assuming arguendo that the Charging Parties, when members, received the notice in the December 1989 "Machinist",¹¹ that this notice was adequate to apprise employees of their Beck rights,¹² and that the Unions' annual window period was otherwise reasonable, the Unions violated the Act by failing to provide these new nonmembers with Beck notices, and an opportunity to object to payment of full membership dues, after they resigned membership.

The Charging Parties are entitled to be treated as objecting nonmembers from the time the Unions failed to provide them with proper Beck notices.¹³ A fortiori, the

⁹ See General Counsel Memorandum 88-14, "Guidelines Concerning CWA v. Beck" (hereinafter Beck Guidelines), November 15, 1988, at 3; CWA Local 1118 (New York Telephone Co.), Cases 3-CB-5648 et al., Advice Memorandum dated May 25, 1990 (we expressly rejected the union's argument there that, since it exceeded Beck requirements by providing notice to both members and nonmembers in its annual newspaper, it should not be required to provide separate notices to members when they resign).

¹⁰ See Beck Guidelines at 3; New York Telephone, supra, at 3.

¹¹ It appears that at least two of the Charging Parties probably did not receive this publication.

¹² The notice was not adequate. See Rockwell International, supra, at 8-10 (Beck notice buried in union magazine, without reference on cover or in table of contents, is inadequate).

¹³ Thus, we would infer that these individuals, who have objected in Board proceedings to paying full dues, would have objected earlier had they been properly informed of their Beck rights. See IBEW (E.G & G of Florida, Inc.),

Unions were not permitted to disregard the Charging Parties' objections because they were outside the January 1990 window period. Since the Charging Parties objected to paying dues in excess of a pro rata share of the Unions' representational expenses, they could not be charged full dues and should have been issued disclosure statements explaining the Unions' allocation of expenditures as "representational" and "non-representational".

4. Are the Unions' procedures for according Beck rights unlawful because they (a) require objectors to request objector status in the form of an individual letter; (b) require the mailing of an objection letter to the Unions' General Secretary-Treasurer; (c) require the letter be sent via "certified mail"; and (d) restrict the filing of objections to a "window period?"

It is not unlawful for the Unions to require that Beck objections be made to a designated Union official, so that the Unions can efficiently and accurately keep track of and respond to all objections, so long as the requirement is set out properly in the initial Beck notice.¹⁴ We also conclude that it is not unlawful for the Unions to require that objections be made in writing, as this accomplishes a similar reasonable purpose without imposing undue burdens on objectors.¹⁵

However, it is unlawful for the Unions to require that Beck objections be sent via certified mail, because such a requirement creates an unnecessary impediment to the

Case Nos. 5-CB-6597, 6624, Advice Memorandum dated October 22, 1990; CWA, AFL-CIO, District 13 (The Diamond State Telephone Co.), Case No. 4-CB-5386, Appeals Minute dated October 6, 1989, at 3-4.

¹⁴ See IAM (The Boeing Co.), Cases 19-CB-6643 et al., Advice Memorandum dated February 6, 1991, at p. 8-9.

¹⁵ Cf. UAW Local 148 (Douglas Aircraft), 296 NLRB No. 125 (1989) (union resignation case relied upon in Boeing, supra). For purposes of evaluating the Charging Parties' objections, these lawful requirements are irrelevant; any failure by the Charging Parties to comply would be excused by the Unions' failure to issue proper notices enunciating the filing requirements.

assertion of Beck rights.¹⁶ Furthermore, we conclude that it is unlawful for the Unions to require that objections be made "individually", i.e., that each objector submit a separate objection letter, since such a requirement serves no legitimate purpose and creates hurdles in the way of exercising Beck rights. So long as an employee objects by signing his name to a letter sent to the appropriate Union official, the Unions' interest in accuracy and efficiency are adequately protected.

Finally, with regard to the lawfulness of the Unions' window period, we have determined that window periods of "reasonable" duration are lawful if adequately described in the initial Beck notice.¹⁷ Thus, the Unions' window period of one month duration, following the annual notice in its December newspaper wherein the window period was fully explained, would have been reasonable and lawful on its face had the notice not been buried in the Unions' newspaper. As discussed supra at issue 3, however, the Unions' application of the window period to the Charging Parties, who resigned membership after the period expired, was unlawful.

5. Did the Unions violate Section 8(b)(1)(A) of the Act by advising the Charging Parties in the correspondence of May 9, 1990 that they were obligated to pay "full dues" and that failure to pay their arrearage would subject them to a "reinstatement" fee?

For the reasons discussed at issue 3, supra, we conclude that the Charging Parties properly filed Beck objections, notwithstanding that the objections were outside the Unions' window period, and that the Unions violated Section 8(b)(1)(A) by ignoring these objections and requiring that the Charging Parties continue to pay full dues, as well as reinstatement fees owing because of the failure to pay full dues. Once the objections were made, the Unions could not lawfully collect any dues from these objecting nonmembers prior to fulfilling Beck obligations, including the obligation to issue disclosure

¹⁶ See Boeing, supra, at 8-9, citing Douglas Aircraft, supra.

¹⁷ See Beck Guidelines at 3; E.G. & G. of Florida, Inc., supra at 3-4.

statements explaining the Unions' calculation of the representational fee.¹⁸

Moreover, once these nonmembers objected, the Unions were required to refrain from using even temporarily any portion of the objectors' agency fees that was unrelated to collective bargaining, contract administration, or grievance adjustment.¹⁹ Thus, assuming that some portion of the Unions' expenses for the prior year were nonrepresentational, it was unlawful for the Unions to collect full dues from the Charging Parties.

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¹⁸ See Beck Guidelines at 4; UFCW (Meijer, Inc.), Case 7-CB-7711, Advice Memorandum dated February 23, 1989, at 4-6.

¹⁹ Ellis v. Railway Clerks, 466 U.S. 435, 443-444 (1984); AFT Local No. 1 v. Hudson, 475 U.S. 292 (1986); Meijer, *supra*, at 4-6.